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glossary

Glossary of Legal Terms

Adjournment

When a case is not ready to proceed on the day it is listed, it might be postponed ("adjourned") to another day. Also if court proceedings have to be stopped for any reason they are adjourned. If a criminal matter is adjourned and the defendant has not been granted bail he is "remanded" to appear on the adjourned day.

Bail

When a person is charged with a criminal offence he/she will remain in custody until the hearing of the case unless a magistrate or judge grants bail. This requires a formal promise that he/she will appear at the hearing. As a guarantee that he or she will appear, a sum of money may have to be paid to the court which will be refunded if the defendant appears at the hearing or forfeited if he/she does not.

Barrister

A person who has qualified as a lawyer and specialises as an advocate in court appearances.

Civil Proceedings

Proceedings brought by the Crown or private persons to redress a wrong which has been suffered and which is not covered by a law which imposes a penalty. The most common involve recovery of a debt, a claim for damages.

Common Law

Law is made in two ways. The Parliament passes laws which are known as statute law. Common Law is the law which is developed by judges interpreting the law in the light of previous cases.

Committal Proceedings

When a person is charged with a serious criminal offence an investigation is carried out by a Magistrate, usually in a Local Court, to determine whether there is sufficient evidence for the matter to go before a judge and jury. The defendant does not usually present his/her side of the story at these committal proceedings, reserving his/her defence until the trial.

Contract

A contract is an agreement between two or more parties which is enforceable. To be enforceable generally, there must be an offer by one party, an acceptance of that offer by the other party and "valuable consideration". Valuable consideration is what is given or done in return for the promise. The usual consideration given is money, goods or some promise to do something or refrain from doing something. A contract may be oral or in writing.

Criminal Proceedings

Proceedings usually brought by the Crown (often the Police) where there has been a breach of the law and a penalty is imposed in an Act for that breach. The common "law" involved is the New South Wales Crimes Act which deals with the common crimes including murder, manslaughter, robbery, stealing and assault (including rape). Proceedings may be brought for statutory offences (i.e. breach of statute law), including breaches of N.S.W. Legislation such as the Motor Traffic Act, the Companies Act, the Licensing Act, the Poisons Act and the Pure Foods Act, and Commonwealth legislation, such as the Commonwealth Crimes Act, the Social Securities Act, the Customs Act, and the various Taxation Acts.

Defendant

A defendant is a party against whom an action or charge has been brought. Once a defendant in criminal proceedings is committed for trial before a judge and jury, he/she is referred to as the accused.

Equity

Historically, the common law (made by judges) became entrenched in formal rules which could give rise to injustices. A system of equity also made by judges came into being which provides remedies where it would be unjust or unfair to enforce the common law. Cases now dealt with in the Equity Division of the Supreme Court include claims against people holding property for others (trustees), claims to stop people invading legal rights (injunctions), and claims requiring people to carry out their contracts (specific performance).

Exhibits

Documents, articles of clothing, equipment, etc., which are tendered to the Court as evidence by either of the parties to a case, and which are admitted as evidence by the judge or magistrate are referred to as exhibits.

Judge

A person appointed to determine disputes between parties. In New South Wales judges determine disputes in most courts other than Local Courts and a number of tribunals and boards. Judges are addressed as "Your Honour".

Jury

Members of the community who determine questions as to what happened (fact). There are twelve jurors in a criminal trial and usually four in civil proceedings.

Magistrate

A person who presides over Local Courts. Local Courts deal with small debts, less serious crimes, inquests into violent and unexplained deaths and investigations into whether a person may have committed a serious crime (see Committal Proceedings). Magistrates are addressed as "Your Worship".

Mens Rea

An intent to commit a crime. (A crime is an offence for which a penalty is prescribed). Mens rea is an essential element of all common law offences, but not always of statutory offences.

Negligence

Negligence involves the failure of one party to exercise proper care towards another party and as a result, that other party has suffered an injury or loss -called "damages". Contributory Negligence refers to a situation where even though the first party has been negligent, the other has not shown sufficient care to protect him/herself and by these actions contributed to his/her own sufferings or damages.

Plaintiff

A person who brings or commences a civil action.

Precedent

A principle established in a past case. A judge or magistrate is bound to follow a decision in a previous case (in which the facts are similar) where the court handing down the decision is higher in the court system. A hierarchy of courts is set out in Part 12. In some cases N.S.W. Courts follow English decisions or decisions of superior courts outside the N.S.W. court system.

Prosecutor

A person who presents evidence and conducts the case

against an accused person in criminal proceedings. In Local Courts, he or she is usually a specially trained member of the police force. In criminal trials he or she is called a crown prosecutor and is usually appointed from the ranks of practising barristers.

Solicitor

A person who is qualified in law and trained to handle legal matters generally. Some solicitors specialise in court appearances but because solicitors also handle other matters they do not usually appear in superior courts (e.g. Supreme Court, Federal Court and High Court).

Trial

This word is commonly used to cover all legal proceedings. However, more exactly it refers to a criminal case which is heard by a judge and jury.

Witness

A person who can give evidence in relation to the facts in issue in legal proceedings.

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procedures

Trial Procedures -Summary

The trial proceeds in the following order:

Opening Addresses

- Prosecution/Plaintiff Barrister
- Defence Barrister

Testimony of the 1st Prosecution/Plaintiff Witness

- Examination in Chief by 1st Prosecution/Plaintiff Barrister
- Cross Examination by 1st Defence Barrister
- Re-examination by 1st Prosecution/Plaintiff Barrister (optional)

Testimony of the 2nd Prosecution/Plaintiff Witness

- Examination in Chief by 2nd Prosecution/Plaintiff Barrister
- Cross Examination by 2nd Defence Barrister
- Re-examination by 2nd Prosecution/Plaintiff Barrister (optional)

Testimony of the 1st Defence Witness

- Examination in Chief by 1st Defence Barrister
- Cross Examination by 1st Prosecution/Plaintiff Barrister
- Re-examination by 1st Defence Barrister (optional)

Testimony of the 2nd Defence Witness

- Examination in Chief by 2nd Defence Barrister
- Cross Examination by 2nd Prosecution/Plaintiff Barrister
- Re-examination by 2nd Defence Barrister (optional)

Adjournment

Closing Addresses

- 2nd Prosecution/Plaintiff Barrister
- 2nd Defence Barrister

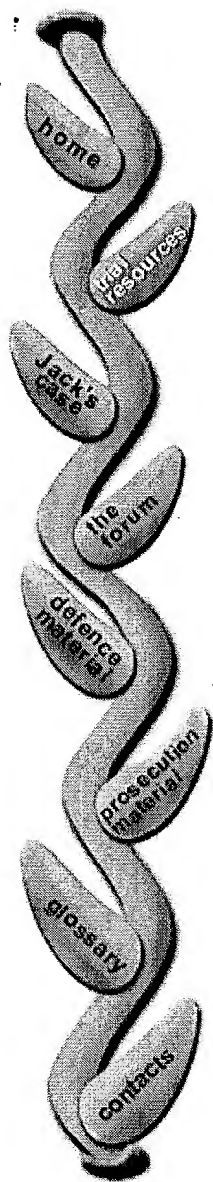
Adjournment and discussion with Magistrate

Magistrate's decision

Detailed Order of Proceedings

The Court Officer announces, "This Mock Court is now sitting."

The Magistrate's Clerk/Judge's Associate calls the case. In criminal matter he or she will say, "Police against (insert name of the defendant eg. Robinson). In a civil matter he or she will say, the name of the first party



and the name of the other party, (eg. Robinson and Jones").

The Magistrate/Judge asks for appearances in the matter. The Prosecution/Plaintiff's first barrister says, "If your Worship/Honour pleases, my name is X, and I am appearing with my learned friend, Y (the name of the other barrister) for the prosecution/plaintiff. We are instructed by Z (the name of the instructing solicitor)."

The Defendant's first barrister then introduces their names in the same way.

The Prosecution/Plaintiff first Barrister then briefly explains the plaintiff's/prosecution's side of the case. (opening address).

The Defence Barrister delivers the opening address.

***** The opening addresses should take no more than about 5 minutes each**

The Magistrate/Judge then requests the Prosecution/Plaintiff team to hand over a copy of the statement of the first Prosecution/Plaintiff witness to the Defence Team. The receiving team is then given three minutes to examine the statement before the witness commences his/her testimony. (This procedure is repeated for each witness) The receiving team then keeps the statements.

The Magistrate/Judge then requests the prosecution/plaintiff to call his/her first witness.

******* The Court Officer then swears the witness by saying, "It is your duty to assist the Court in these proceedings by faithfully answering the questions put to you. Do you understand this?". (A bible should not be used to swear witnesses)

The witness replies, "Yes".

The first witness is then examined in chief by the prosecution/plaintiff's first barrister and then cross examined by the defendant's first barrister. If it is appropriate the prosecution/plaintiff's first barrister then re-examines the first witness.

******* The Magistrate/Judge then requests the Prosecution/Plaintiff team to hand over a copy of the statement of the second Prosecution/Plaintiff witness to the Defence team, which are given 3 minutes to read the statement. The prosecution/plaintiff's second barrister then calls the second witness for the prosecution/plaintiff and conducts the examination in chief of the second witness. This witness is then cross-examined by the second barrister for the defence and then re-examined (if appropriate) by the second barrister for the prosecution/plaintiff.

At the end of the prosecution/plaintiff's case, the prosecution/plaintiff's second barrister says, "Your Worship/Honour, that is the case for the prosecution/plaintiff."

The defendant's barristers then call their witnesses and the procedures are identical to those set out above for the prosecution/plaintiff. At the conclusion of the defendant's case, the second barrister for the defence says, "Your Worship/Honour, that is the case for the defence."

The Magistrate/Judge then adjourns the Court for approximately 10 minutes.

The Court Officer says, This Mock Court is now adjourned."

***** During this period the barristers and solicitor ONLY prepare the final address. There must be no assistance from either coaches or teachers or any other team member.**

After the adjournment, the Court Officer says, "All stand! This Mock Court is now resumed."

*** The Magistrate/Judge enters and bows.

The Magistrate/Judge sits and the audience sits.

The prosecution/plaintiff's second barrister then makes his or her closing address on:-

- The evidence that was given
- How every element required by the law was proved by the evidence
- The law supporting the case (refer to precedents if appropriate). If the precedents are not appropriate then the team should distinguish them on the basis that there are essential differences in the facts or in the law.

The Defendant's second barrister then makes his or her closing address on the evidence before the court:-

- Where the plaintiff/prosecution has failed to prove its case
- Where the defendant has made out his/her defence
- The law in support, and
- The law which may be distinguished

***** The closing addresses should take no more than about 15 minute each.** The Magistrate/Judge should then ask for each team solicitor's notes taken during the trial, the records kept by the Court Officer and the Magistrates Clerk/Judge's Associate.

The Magistrate/Judge may then adjourn the trial briefly whilst he/she examines

- time sheets recorded by the Court Officer and the Magistrate Clerk/Judge's Associate
- the objections sheet recorded by the Magistrate's Clerk
- the solicitor's notes taken during the trial

The Magistrate/Judge then scores the mock trial.

The Magistrate/Judge then gives short judgement in the case and announces the scores for each of the teams.

The Court Officer then closes the Court by saying, "This Mock Court is now adjourned."

This concludes Mock Trial On Line.



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mock trial forum

[Go to the Forum](#)

Web Forum Help

We suggest you print out this page for reference during the forum. All of the **bold** references are to buttons or features of the forum system.

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[Observing](#)

[Following a topic](#)

[Asking a Question](#)

[Cookies](#)

[Moderation](#)

[After the Event](#)

Observing the discussion.

During the forum you will see a frame on the left hand side of the screen. It contains hyperlinks to the 15 most recent messages posted. (The newest ones are at the top). The left frame is auto-refreshed about once a minute. At the bottom is a link - earlier posts - to less recent messages. When you follow this link, the left frame changes to display links to messages posted earlier. You will also find a button - latest posts - which enables you to switch back.

When you click-on any of the hyperlinks in the left hand frame, that message will be displayed on the right hand side of your screen. You can read this at your leisure. To follow the discussion from the beginning, start at the bottom, and work your way up.

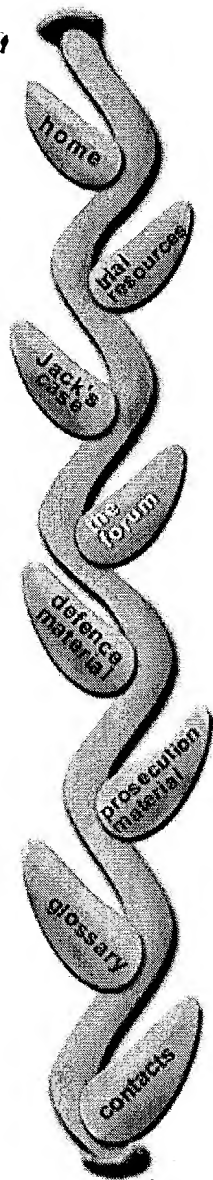
Following a topic within the discussion.

By default, hyperlinks in the left pane are displayed in chronological order.

Asking a Question / Making a Contribution

If you want to contribute to the discussion, there are two ways to do so.

- You can reply to any message by clicking on the Reply button included at the bottom of each message. Your reply will be included as part of that thread of discussion.
- If you want to start a completely new section of the trial, use the New Section button on the menu bar at the top of the screen. When people reply to your contribution, the replies will be grouped under the topic name you created. Check that the



topic or question has not already been created or asked.

The first time you opt to make a contribution, you will be presented with a mini-form asking for your name and email address. Your email address is optional, but your name is not. Your name will be included as part of your question when it appears online.

Cookies

The first time you post a message our software will ask to set a 'cookie' on your computer. This 'cookie' is ephemeral and will expire 60 minutes after the webchat concludes. Its purpose is simply so you are asked for a user name only once - instead of each time you post a question. No other information is kept. User name information is discarded as soon as the live chat is over.

A form opens up where you can enter your question. You can cut and paste pre-written questions into this form, but the form has no spell checker. What you type in is what will be sent, so it's a good idea to check for typos before you send the question.

The maximum length of a message is 3000 characters, (which is about 600 words). Please note that in the trial guidelines, there are word limits on the length of contributions you may make.

When you are happy with your question, press the button Submit.

Tip: If you change your mind about sending a question, you can cancel by clicking anywhere on the left or top panes.

Moderation

This discussion is pre-moderated and all postings will appear in the right-hand pane within a few minutes. The ABC reserves the right to remove offensive or inappropriate material.

After the event...

The forum will be archived. This means that even if you miss the live part, you will still be able to follow what was said long afterwards. You can follow the discussion from the beginning by starting at the bottom of the 'earlier posts' and working upwards.

Click on any link in the left pane to continue. To return to this screen at any time click Help.

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mock trial forum

Running Order

15 June 1999

It is advised that participants print this page out for reference.

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	Item	Time	Clock Starts At
	Summary		
A	Opening Court Introductions, Solicitor's notes, Opening addresses	10	4:30
B	Prosecution case Both Witnesses	50	4:40
C	Defence case Both witnesses, and following recess	60	5:30
D	Closing Address Both closing addresses and following recess	15	6:30
E	The Decision Includes closing court	3	6:45
	Mock Trial Ends		6:48

A. Introductions and opening addresses/solicitors notes

1. Judge.

1. Announces that (s)he is on line
2. Opens the www.mock court
3. Asks the two schools to verify that they are on-line and ready to proceed.

(Nb: normal court protocols apply from this point.)

2. Both schools.

1. Both schools respond by indicating that they are online and who is in the team. The names of all members of the whole team should be identified at this point. It is clear that the team will be working together during the www.trial so there is no need to identify respective roles, although teams may wish to do so.

Please note that students should not feel compelled to indicate their surnames if they have any privacy-related fears. This information should be pre-prepared and uploaded immediately after the request from the Judge.

3. Judge.

1. Asks both schools to 'email' their respective solicitor's notes to an email address nominated on the night (in the case of the inaugural 'live' mock trial this will be learn@your.abc.net.au).

The purpose of the email (as opposed to uploading to the ABC web site) is to allow 'privileged' and confidential information to remain confidential.

4. Both schools.

1. Email the solicitors notes to the Judge's nominated email address. The solicitor's notes should not be sent as an attachment but should be placed in the body of the email itself.

This restriction avoids the possible problems of incompatible word-processing programs and viruses. This information should be pre-prepared and should be e-mailed immediately after the request from the Judge.

5. Judge.

1. Asks both teams to upload their respective opening addresses
2. Directs that teams spend the next five minutes examining the other team's speech.

6. Both schools.

1. Both schools upload their opening addresses.

This information should be pre-prepared and uploaded immediately after the request from the Judge.

B. The Prosecution/plaintiff case

7. Judge.

1. Uploads the first statement for the prosecution/plaintiff (PW1) and asks the defence to begin cross-examination of PW1.

8. Defence.

1. Uploads the first cross-examination question for PW1. The cross-examination process will take place for approximately 20 minutes. Each cross-examination question should be uploaded separately.
2. The opposing team should respond to each question separately in a timely and efficient manner.

There is no need for prompting from the Judge during this process. As soon as a question has been called for by the Judge and provided by the cross-examining school the process runs as it would in a normal court situation - i.e., question, answer, question, answer etc. As a general rule there should be no more than a one minute delay in responding - although responses, which may only be one word, should generally occur in less than one minute.

Teams are reminded that this www.mock trial is **not** a competition but an educational interaction that includes the time and efforts of many people not from the schools themselves - as such any 'tactical' delay in responding to cross-examination questions is not in keeping with the exercise, or the 'professional ethics' that teams have implicitly assumed.

(As a general rule, each team will have pre-prepared all cross-examination questions and will simply upload each question, or a slight modification of each question, after receiving the response from the opposing team.)

9. Judge.

1. After approximately 20 minutes the Judge will indicate that cross-examination is at an end.
2. The Judge will ask the prosecution whether it wishes to re-examine PW1.

10. Prosecution/plaintiff.

1. Re-examines PW1, or indicates that it does not wish to re-examine PW1. Re-examination, if it occurs, should be a block of text which includes the re-examining question (not leading) and the answer of PW1. The time allocated for re-examination is 3 minutes only.

Any text, questions and answers by the prosecution, must be submitted within 3 minutes of the request by the Judge.

The Judge reserves the right to disallow, or disregard, material which is raised in re-examination.

(As a general rule, each re-examining team will have anticipated the possible lines of cross-examination for this witness. As such there is the possibility that re-examination questions and answers may, to some extent, be pre-prepared).

11. Judge.

1. Uploads the second statement for the prosecution/plaintiff (PW2)
2. Asks the defence to begin cross-examination of PW2.

Defence.

1. Uploads the first cross-examination question for PW2. The process is the same as stated in No.8

above.

Again, there is no need for prompting from the Judge during this process. As soon as a question has been called for by the Judge and provided by the cross-examining school the process runs as it would in a normal court situation - i.e., question, answer, question , answer etc.

(As a general rule, each team will have pre-prepared all cross-examination questions and will simply upload each question, or a slight modification of each question, after receiving the response from the opposing team.)

13. Judge.

1. After approximately 20 minutes the Judge will indicate that cross-examination is at an end.
2. The Judge will ask the prosecution whether it wishes to re-examine PW2.

14. Prosecution/plaintiff.

1. Re-examines PW2, or indicates that it does not wish to re-examine PW2. Re-examination, if it occurs, should be a block of text which includes the re-examining question (not leading) and the answer of PW2. The time allocated for re-examination is 3 minutes only.

Any text, questions and answers by the prosecution, must be submitted within 3 minutes of the request by the Judge. The Judge reserves the right to disallow, or disregard, material which is raised in re-examination. (As a general rule, each re-examining team will have anticipated the possible lines of cross-examination for this witness. As such there is the possibility that re-examination questions and answers may, to some extent, be pre-prepared).

C. The Defence case.

15. Judge.

1. Uploads the first statement for the defence (DW1)
2. Asks the prosecution/plaintiff to begin cross-examination of DW1.

16. Prosecution/plaintiff.

1. Uploads the first cross-examination question for DW1. The process is the same as stated in No.8 above. Again, there is no need for prompting from the Judge during this process.

As soon as a question has been called for by the Judge and provided by the cross-examining school the process runs as it would in a normal court situation - i.e., question, answer, question , answer etc. (As a general rule, each team will have pre-prepared

all cross-examination questions and will simply upload each question, or a slight modification of each question, after receiving the response from the opposing team.)

17. Judge.

1. After approximately 20 minutes the Judge will indicate that cross-examination is at an end.
2. The Judge will ask the defence whether it wishes to re-examine DW1.

18. Defence.

1. Re-examines DW1, or indicates that it does not wish to re-examine DW1. Re-examination, if it occurs, should be a block of text which includes the re-examining question (not leading) and the answer of DW1. The time allocated for re-examination is 3 minutes only.

Any text, questions and answers by the prosecution, must be submitted within 3 minutes of the request by the Judge. The Judge reserves the right to disallow, or disregard, material which is raised in re-examination. (As a general rule, each re-examining team will have anticipated the possible lines of cross-examination for this witness. As such there is the possibility that re-examination questions and answers may, to some extent, be pre-prepared).

19. Judge.

1. Uploads the second statement for the defence (DW2)
2. Asks the prosecution/plaintiff to begin cross-examination of DW2.

20. Defence.

1. Uploads the first cross-examination question for DW2. The process is the same as stated in No.8 above.

Again, there is no need for prompting from the Judge during this process. As soon as a question has been called for by the Judge and provided by the cross-examining school the process runs as it would in a normal court situation - i.e., question, answer, question, answer etc.

(As a general rule, each team will have pre-prepared all cross-examination questions and will simply upload each question, or a slight modification of each question, after receiving the response from the opposing team.)

21. Judge.

1. After approximately 20 minutes the Judge will indicate that cross-examination is at an end.
2. The Judge will ask the prosecution whether it

wishes to re-examine DW2.

22. Defence.

1. Re-examines DW2, or indicates that it does not wish to re-examine DW2. Re-examination, if it occurs, should be a block of text which includes the re-examining question (not leading) and the answer of DW2. The time allocated for re-examination is 3 minutes only.

Any text, questions and answers by the prosecution, must be submitted within 3 minutes of the request by the Judge. The Judge reserves the right to disallow, or disregard, material which is raised in re-examination. (As a general rule, each re-examining team will have anticipated the possible lines of cross-examination for this witness. As such there is the possibility that re-examination questions and answers may, to some extent, be pre-prepared).

23. Judge.

1. Calls for a brief recess of ten minutes.
2. Both teams should use this time to complete closing addresses.

(Both teams should have pre-prepared a draft closing address prior to the beginning of the trial. Tip: teams may like to split resources during the examination of the final witness to begin refining the address prior to the recess).

D. Closing addresses

24. Judge.

1. Calls for the prosecution/plaintiff to upload its closing address.

25. Prosecution/plaintiff.

1. Uploads the closing address for the prosecution/plaintiff.

26. Judge.

1. Calls for the defence to upload its closing address.
2. The defence has an 'optional' extra 2 minutes in which to submit its closing address. This two minute period is to digest the prosecution/plaintiff closing address and to allow the defence to modify its closing address as necessary.

27. Defence.

1. Uploads the closing address for the defence.

28. Judge.

1. Calls for a ten minute recess in order to make a decision.

E. The decision

29. Judge.

1. Uploads decision.
2. Thanks teams and closes the www.mock court.

To Actual running times for 1 June

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mock trial forum

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Most Recent Mock Trial **Tuesday 15th June 1999**

Participants **Scots School (Albury)**
Kambala Girls School (Rose Bay)

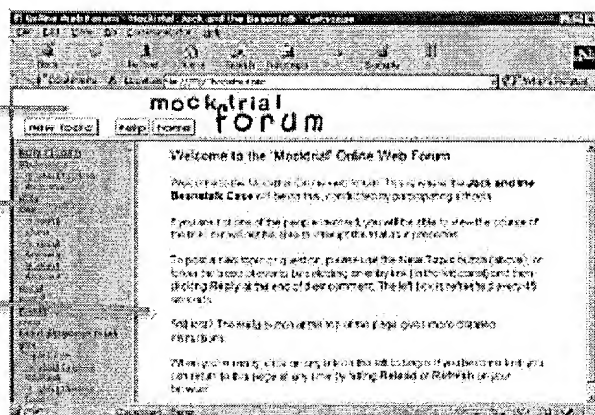
When the Mock trial Online is active, the Forum will be the heart of the project. Using the ABC's web Forum system, it will replace the physical classroom with a virtual version.

Instead of speaking, participants will post their comments as text. In most respects, the case will work in exactly the same way that the face-to-face versions do, including cross-examination of witnesses and so forth.

At this stage, active participation will be limited to the schools directly involved. In future , we anticipate being able to expand the project to allow many more schools to take part. The first Mock Trial will take place on 15 June 1999. The participant schools are yet to be finalised.

How it works

The forum screen has these elements:



- 1 The Navigation window**
This contains the controls used to move around in the forum
- 2 The List window**
The running list of contributions, arranged in order of posting. By clicking on one of these names you can bring up the message in the Message window. This allows you to go back and look at previous

messages and also to follow the cross-examinations.



The Message window

This is where the actual content of the messages - the arguments, the responses and so forth - is posted.

For more detailed information about the use of the forum, go to the **HELP** page. We recommend participants print this help page for reference during the event.

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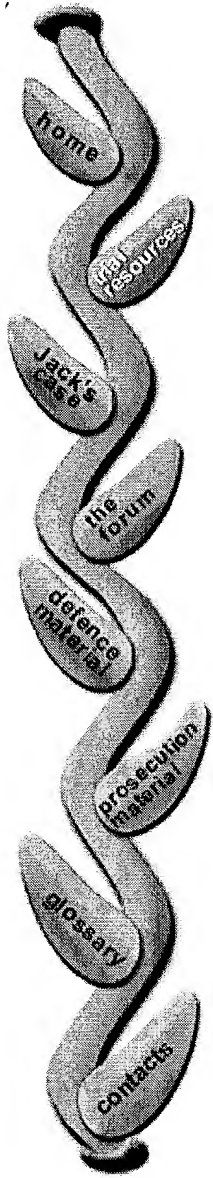
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roles of team players



The Constitution of Mock Trial Teams

The **prosecution/plaintiff** team shall consist of:

- 1st Barrister
- 2nd Barrister
- Instructing Solicitor
- 2 Witnesses
- Court Officer

The **Defence** team shall consist of:

- 1st Barrister
- 2nd Barrister
- Instructing Solicitor
- 2 Witnesses
- Magistrate's Clerk/Judge's Associate

ROLES OF THE TEAM MEMBERS

Barristers

The first barrister for each team will announce appearances and give the opening address. He or she will then examine in chief the first witness. The first barrister for the opposing team will then cross-examine and the first barrister may then re-examine.

Similarly, the second barrister will examine the second witness with the opposing second barrister cross-examining and re-examining as appropriate. The second barrister will announce the conclusion of his/her case and give the closing address.

Only the barrister responsible for examining-in-chief or cross-examining the witness may object to questions put to the witness or evidence given by the witness.

The Magistrate/Judge assesses their performance on many aspects of their presentation including;

- Appropriate presentation of facts and law in opening address
- Proper introduction of evidence
- Questioning in accordance with rules of evidence during examination in chief
- Appropriate re-examination or omission of re-examination as appropriate
- Cross-examination directed at relevant parts of evidence in chief
- Avoidance of unnecessary repetition of evidence in chief
- Cross-examination on relevant points of own case
- Appropriate objections
- Making considered responses to objections
- Summarising evidence and issues of fact accurately in closing address

- Making appropriate submissions on issues of law in closing address
 - Persuasion
-

Solicitors

The role of the instructing solicitor involves co-ordinating the preparation of the case and instructing the barristers during the hearing of the case. Solicitors should also assist in the preparation of the closing address. The solicitor's pre-trial notes for the preparation of the case show a grasp of the case by identifying relevant issues, areas for cross-examination, likely objections and responses. Solicitors should assist barristers during the trial by recording the evidence given and pointing out important matters. The solicitors are judged on the following aspects:

- Quality of pre-trial notes, identifying preparation and grasp of case etc.
 - Apparent active participation in proceedings
 - Quality of notes of proceedings
-

Magistrate's Clerk/Judge's Associate

The role involves:

- marking all exhibits according to the Magistrates/Judges' direction.
 - Keeping the time sheet and noting the time when each examination in chief and cross examination commenced, ended and its duration. The time sheet should be keyed to the Magistrate/Judge during the mid-trial adjournment.
 - Keeping the list of objections made by each barrister and noting the objection, the nature of the objection and the Magistrate's/Judge's ruling. The objection sheet should also be keyed to the Magistrate/Judge at the mid-trial adjournment.
 - The Clerk/Associate is judged according to his/her performance of these duties.
-

Court Officer

This role involves:

- Opening the Court
- Closing the Court
- Maintaining order in the Court
- Calling witnesses. The Court Officer must give the order of witnesses as they appear. There is no choice in the order of witnesses
- Swearing witnesses
- keying documents to the Magistrate's/Judge's Clerk for marking as necessary .
- Keeping time and signifying when time for each examination is reached. A bell should be rung when there is two minutes left.
- Keeping the time sheet and noting the time when each examination in chief and cross examination commenced, ended and its duration.

The time sheet should be keyed to the Magistrate/Judge during the mid-trial adjournment.

- The Court Officer is judged according to his/her performance of these duties.

Witnesses

Witnesses must appear in the order in which they appear in the script. There is no choice in the order of witnesses.

The witnesses comprise the parties to the action (plaintiff/prosecution or defence) and other persons who can state facts (or opinions) relevant to the case

The witnesses' statements are included amongst the material prepared by the Law Society and must be adhered to strictly. There must be no additional material used - no expansion material, no deletions, additional material, ie., maps, diagrams, plans, exhibits, apart from the ones provided by the Law Society.

The witnesses provide most of the information to be used in the trial and their accurate recall is important.

During examination-in-chief the witness places his or her statement of oral evidence before the Court.

The performance of the witness is judged on several features including:

- full and accurate recital of evidence in chief
- Apparent preparation for cross-examination
- Ability to copy with cross-examination.
- Witnesses should not be prompted by anyone and this could lead to loss of points or disqualification.

The Witness's statement must be recited in the order given. There must be no deletions, additions or change in order given. Do not overdo this rule and harass the witness by insisting on every little word (and, but etc)

If a witness is not reciting the statements in the order given, or deleting or adding to the statement, or there is any inconsistency whatsoever, the opposing team may request a ruling from the Magistrate/Judge by saying:

"Your Worship/Honour, I draw your attention to the inconsistency in the witnesses' statements. Under rule 41 of the Mock Trial Manual this is not allowed. Can I have a ruling please?"

This should not be treated as an objection - just a request for a ruling.

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Grounds for objection

Grounds for Objection - Evidence

Objections may include the following:

Relevance

Only relevant evidence is admissible. Relevant means the evidence proves or tends to prove a fact that is in dispute. For example, in a case involving a collision of two motor vehicles, the speed that the vehicles were travelling would probably be relevant, but what the drivers ate for breakfast would probably be irrelevant.

All irrelevant material is inadmissible. This is an over-riding principle that applies to all evidence put before the court.

However, the mere fact that evidence is relevant does not make it automatically admissible. The application of the other rules of evidence used in the mock trial competition may be admissible. For example if the Rule in Brown v Dunn is breached.

Opinion

This rule relates to conclusions or views formed by witnesses based on facts which they have observed. Opinions may not be given in evidence (if relevant) For example, the observation by a witness that another person was red in the face and shaking his fists would be admissible, but the conclusion or opinion that the person was very upset or was angry with him would not be admissible.

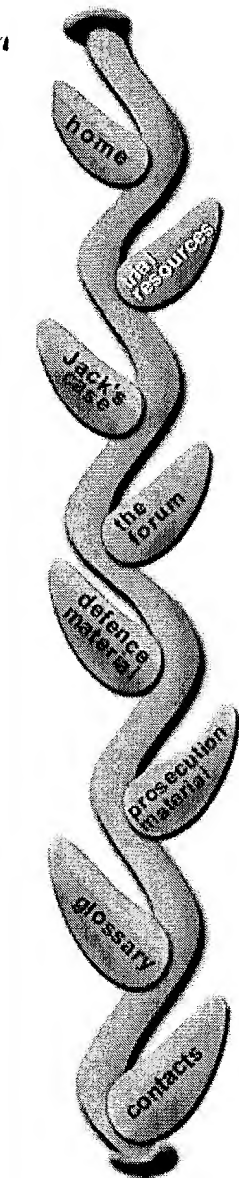
The exception to this rule is where opinion evidence is given by a witness who is an expert in the field to which the opinion relates. Expert in this context means someone who has special expertise in a field, whether from qualifications or formal training, or from experience in that field. Before the opinion is given in evidence, the previous evidence given by that witness must qualify him or her as an expert in the field to which the opinion relates. This is done by leading evidence from him or her about his or her qualifications, experience and so on.

Hearsay

Hearsay is the statement by a witness of what he or she heard someone else say. Subject to the exceptions set out below, such evidence is inadmissible as to the truth of what the other person said.

For example, the statement by a witness, "Mrs Smith told me she saw Mr Simpson driving the car", is not admissible to prove that Mr Simpson was in fact driving the car. It is only admissible as evidence that Mrs Smith said it if that fact is relevant.

The reasons for the hearsay rule are:



- (i) Hearsay is not the best evidence - Mrs Smith should give her own account to the court on oath.
- (ii) It is second-hand evidence which means that it may have changed in the re-telling.
- (iii) There is no opportunity to cross-examine the person who made the comment or observation to test his or her competence or credibility. For example, it may be that Mrs Smith was not wearing her glasses at the time, or had her view obstructed or had some reason to make up a story about Mr Simpson.
- (iv) Hearsay evidence is easy to concoct and very difficult to disprove.

Exceptions to the hearsay rule:

- (i) When the statement is made in the "heat of the moment" and forms part of the overall picture of what occurred.
 - (ii) When the statement is made by one of the parties in the proceedings and is a statement against that party's interests, for example, an admission.
 - (iii) When the relevance of the contents of the statement is not to establish the truth of the statement but only the fact that the statement was made.
-

Character Evidence

Evidence of bad character by a defendant may not be led by the prosecution/plaintiff. Evidence of good character may be led by either party, but only if it is relevant. If the defendant raises his or her good character or attacks the character of a prosecution/plaintiff witness, the prosecution/plaintiff may cross-examine the defendant on his or her bad character.

Direct Speech

Conversations which are significant should be related by the witness in direct speech. That is, the conversation should be recited as it occurred and not summarised by the witness.

The witnesses statements should still comply with the form in which the statements are made.

For example, "Brian said me, "Could you please drive? I think I have had too much to drink" is the proper way to give evidence, not "Brian asked me to drive because he had had too much to drink."

Grounds for Objections - Procedural

Objections may be lodged only on the following procedural grounds:

Leading or Double Questions

A leading question is one in which the form of the question suggests the answer. For example, "Was the car blue?"

Double or multiple questions are objectionable because they cannot necessarily be answered with a single answer. For example, the answer to the first part of the question might be "yes" while the answer to the second part of the question might be "no".

Failure to comply with the Rule in Browne v Dunn

The rule in Browne v Dunn requires, that unless prior notice has been given of a cross examiner's intention to rely on evidence contradictory to that given by the witness being cross-examined, the cross examiner must put to the witness the nature of the contradictory evidence. A further explanation of this rule is explained in the common law and is found under General Precedents.

Failure to comply with this rule and an objection to evidence.

Once an objection has been lodged, and points awarded if the objection is made correctly, the remainder of the evidence upon which the party relies is allowed to continue to completion, although strictly under this rule it should be disallowed.

Harassing or arguing with witnesses

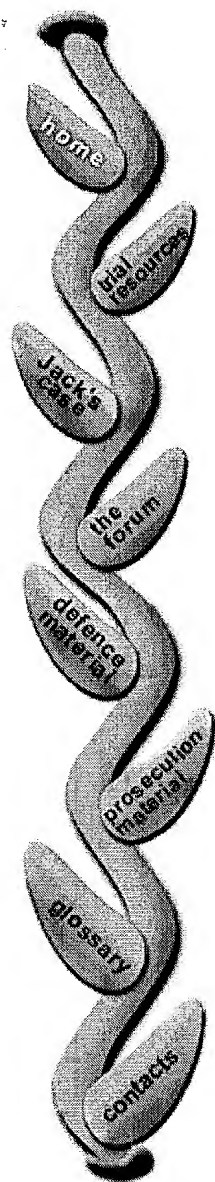
Barristers may lodge an objection if opposing Counsel is harassing or arguing with a witness. This usually occurs during cross examination.

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mock trial online



Welcome to the first Mock Trial Online, the case against Jack Jones for murdering Mr. A. Giant, following the burglary of Mr. Giant's home.

**Most recent
Mock Trial** **Tuesday 15th June 1999**

Participants **Scots School (Albury)**
Kambala Girls School (Rose Bay)

Go directly to the Trial Forum

What is the Mock Trial Online?

The first project of its kind, conducting a full Mock Trial over the internet allows Mock Trials between schools from urban and city, interstate, and potentially on an international level. It is a joint project involving the Law Society of NSW, ABC Online, and the British Council.

Mock Trial Online is based on the Mock Trial competition established 17 years ago by The Law Society of New South Wales (Australia). This was designed to help young people understand what happens in the courts of law.

Mock Trials, or moot courts as they are sometimes also called, are simulated court cases in which the participating student teams contest a fictional legal matter in an adapted Local/District Court sitting.



Each team is coached by a volunteer solicitor or barrister. The trials are presided over by a senior member of the legal profession, acting as a magistrate. The case materials for the trials are provided by the Law Society, and many of the cases quite deliberately deal with matters which students are likely to encounter in their daily lives.

How does it work Online

We follow most of the procedures used in standard face-to-face mock trials, with a few changes. Instead of a real courtroom, we use the ABC's Forum system, which allows users to interact in real-time using a simple web interface. Students and court officials post their comments and arguments on this forum in the appropriate order and can react to the

arguments of other participants.

We have had to make some changes for the new medium. Time limits for speakers have been replaced by word limits, and all the case material has been made available to the counsels before the case begins.

When will it begin?

The first pilot Mock trial Online will be held on June 15th. The participant schools and the timings are being developed at the moment, and more details will be posted here as soon as they are finalised.

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conduct guide

Hints for Conducting a Case

Presentation

Effective presentation of your case requires adequate preparation of all facets of your case as a team. If your team has more than 6 members, you should allocate tasks among the whole team, eg. anticipation of the opponent's case, research of technical matters, identifying likely issues and facts that may be raised in cross-examination of our witnesses.

Opening Address Before any evidence is taken each first barrister will make an opening address to put the Magistrate/Judge "in the picture". This is done by identifying the issues between the parties (by reference to the pleading/charge sheet in criminal cases or the Notice of Claim or Defence in civil cases). In the opening address it is usual to spell out the matters to be proved and how they are going to be proved by briefly summarising the nature and extent of the evidence to be called. The address should contain information which includes physical surroundings (facts) and background information (physical dimensions).

It is not necessary to refer to the law in detail during the opening address. This should be left for the closing address. There is also no need to object to background information.

*** The opening addresses should be no longer than 5 minute each.

Examination in Chief

The first step in the taking of evidence is called examination in chief. This is often quite hard as the purpose is to get the witness to tell his or her story. This is done by bringing out everything the witness can tell to prove the case, but without suggesting to the witness what to say. A question which might suggest the answer to the witness is called "leading the witness" and is not allowed. An example of leading the witness is to say in an assault case, "Did you see the defendant strike the plaintiff?" Instead you should say, "...and what happened next?" and hope that the witness will say, "I saw the Defendant strike the plaintiff." If a leading question is asked in examination in chief, or re-examination, the opposing barrister is entitled to object. A way to get the witness to tell his or her story without leading him or her is to start your questions with words such as who, what, when, where and how.

Leading questions may be asked about matters which are not really in dispute. For example, in a collision case, the time and place of the collision may not be in dispute. Such preliminary leading questions enable the witness to be taken quickly to the real matters in dispute.

Cross examination

After a witness has been examined in chief by his/her barrister, the opposing barrister then cross-examines this witness. The aim of the cross-examination is to test the accuracy of the evidence first given or to establish facts which support the party's case. The barrister can also test the credibility of the witness as to whether he or she should be believed. Testing credibility covers every aspect. For example, the witness was really too far away to really see; he or she was affected by alcohol or drugs

and couldn't really be expected to be thinking clearly; he or she is a close friend of the plaintiff/defendant, he or she has a bias against the plaintiff/defendant; he or she has a reputation for lying or has a number of convictions for dishonesty. In cross-examination, leading questions may and in fact should be asked.

To be a successful cross-examiner, the barrister must have an objective. He or she must know why particular questions are asked. Merely to go on a "fishing expedition" is time wasting and dangerous.

In seeking to disprove the other party's case, the cross-examiner usually attacks two areas of the witness' evidence, namely:

- i) The competence of the witness to give the evidence, or the quality of such evidence because of:
 - (a) lack of perception to give the evidence of what was seen, such as capacity to see, opportunity to see etc.
 - (b) lack of accurate recall
 - (c) lack of narrative ability
- ii) The credibility of the witness, because of:
 - (a) bias, interest, prejudice
 - (b) prior convictions
 - (c) moral character
 - (d) previous inconsistent statements such as evidence given in a written statement which is different from the evidence now given at the trial.

Re-Examination

When the cross-examination of a witness has concluded, the barrister who called the witness has the opportunity to re-examine. The barrister can only re-examine to clarify the evidence given in cross-examination. Re-examination should not be used to put before the court matters which the barrister forgot to ask in the examination in chief. The barrister, in re-examination, should not ask leading questions. Points are awarded for re-examining or refraining from re-examination as appropriate. Re-examination is NOT mandatory.

Re-examination should be used cautiously. Sometimes further questions, asked in an attempt to clarify matters, only makes things worse.

Closing Addresses

The purpose of closing addresses is to summarise your case, highlight the evidence which supports your case and make submissions on the principles of law which are relevant to the case.

- (i) Identify the relevant issues - a plaintiff or prosecutor will limit the issues to the bare minimum to be proven and then show how the evidence brought before the Court proves them. A defendant's barrister might take the opposite tack, and create as many issues as possible and therefore cast doubt as to whether the plaintiff or the prosecution has proven them.

If there is conflicting evidence on a particular point from both sides which cannot be reconciled, the barrister must persuade the magistrate/judge as to why his/her witness or witnesses should be believed in preference to the witnesses of the other party.

(ii) Make submissions as to the law - highlight prior decisions which favour your case, and show how the prior decision applies to the proven facts of your case. Discuss the prior decision which favour your opponent's case and distinguish those decisions i.e. show why they should not apply to the facts of your case.

Submissions in the closing address material should not include evidence which has been ruled inadmissible. The closing addresses should take no more than about 15 minutes each.

Argue succinctly, keeping closely to what you are trying to prove or disprove. Do not indulge in repetition so that you become boring. Try not to develop irritating habits, e.g. saying "I see" every time a witness answers a question. Do not argue with a witness.

Most of all, show courtesy to the Magistrate/Judge, witnesses and your opponent.

General Precedents

The following extracts of precedents and those provided in the case material for each trial may be used. Only these extracts may be used.

Browne v Dunn (1894) 6 R 67

Lord Herschell LC said at page 70 - 71

"...I cannot help saying that it seems to be to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in Cross-examination showing that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, And then, where it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which it is suggested indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness you are bound, whilst he is in the box, to give him an opportunity of making an explanation which is open to him; and, as it seems to be, that is not only a rule of professional practice in the conduct of a case, but it is essential to fair play and fair dealing with witnesses."

On the issue of Browne v Dunn, the following extract may be used: **Allied Pastoral Holding Pty Ltd v Commissioner of Taxation (1983) 1 NSWLR 1.**

Hunt J said at page 16

"It has in my experience always been a rule of professional practice that, unless notice has already clearly been given of the cross-examiner's intention to rely upon such matters, it is necessary to put to an opponent's witness in cross-examination the nature of the case upon which it is proposed to rely in contradiction of his evidence, particularly where that case relies upon inferences to be drawn from other evidence in the proceedings. Such a rule of practice is necessary both to give the witness the opportunity

to deal with that other evidence, or the inferences to be drawn from it, and to allow the other party the opportunity to call evidence either to corroborate that explanation or to contradict the inference sought to be drawn. That rule of practice follows from what I have always believed to be rules of conduct which are essential to fair play at the trial and which are generally regarded as being established by the decision of the House of Lords in *Browne v Dunn* (1894) 6 R 67.

On the issue of the failure of a party in civil proceedings to call witnesses who evidence is relevant or to produce material documents, the following extract may be used:

Allied Pastoral Holding Pty Ltd v Commissioner of Taxation (1983) 1 NSWLR 1.

Hunt J said at page 13:

"The inference available from such failure (where that failure is unexplained) is... that the evidence of such witnesses or the contents of such documents would not have helped that party's case: *Jones v Dunkel* (1959) 101 CLR 298 at page 321. That unexplained failure may also be taken into account in determining whether the tribunal of fact should draw any other inference which is otherwise open upon the evidence and which may have been contradicted by that witness or document; *ibid*, at pp 308, 312, 319. In either case, the result of such unexplained failure may well be fatal to that party's case. Particularly might this be so where the facts are usually peculiarly within the knowledge of that party. But the tribunal of fact is not bound to draw either inference.

On the issue of the burden of proof, the following extract may be used:

Woolmington v Director of Public Prosecutions (1935) AC 462

Sankey LC said at page 481

"Throughout the web of English criminal law one golden thread is always to be seen, that is the duty of the prosecution to prove the prisoner's guilt, subject to what I have already said as to the defence of insanity and subject also to any statutory exception. If, at the end of and on the whole of the case there is reasonable doubt, created by the evidence given by either the prosecution or the prisoner, as to whether the prisoner killed the deceased with malicious intention, the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained."

A Basic Guide to Professional Ethics, Courtesies and Conduct

A barrister should not argue with the Magistrate/Judge. He or she is allowed to make submissions forcefully but courteously. A common phrase used is "with respect...I submit".

A Magistrate in Local Courts is referred to as "Your Worship". A judge in the District Court is referred to as "Your Honour". It is common to use this method of address fairly frequently, e.g. when beginning any statement to

the Magistrate/Judge or when replying to a question.

Barristers must accept the magistrate's/judge's ruling even though they may disagree with it. If a reply is called for it is usual to say "If your Worship/Honour pleases".

If you are quoting reports in cases, do not use abbreviations. If for example you want to quote a case of Smith v Jones reported as (1942) 65 CLR 473 say, "volume 65 of the Commonwealth Law Reports at page 473". If barristers are referring to what a particular judge said in that case, they should refer to the judge by his full name, e.g. "Mr Justice Williams".

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